**IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL.**

(1) First Appeal No. 345 of 2001

(Old No. 720 of 1989)

State of U.P.
Through Collector,
Dehradun **…Appellant,**

Versus

Sardar Bhagat Singh,
R/o 49, Gandhi Road,
Dehradun **…Respondent.**

(2) First Appeal No. 492 of 2001

(1) State of U.P.,
Through Collector, Dehradun,

(2) Union of India,
through the Asstt. Defence Estate Officer,
Dehradun **…Appellants.**

Versus

Dehradun Tea
Company, Dehradun **…Respondent.**

Sri U.P.S. Negi, Addl. Advocate General, for State,
Sri Ashok Agarwal, Advocate, for Union of India,
Sri Rakesh Thapliyal, Advocate, for respondents.

**September 28, 2004**

**Hon'ble P.C. Verma, J.,**
**Hon'bel B.S. Verma, J.**

Both these appeals have been field under section 96 C.P.C. against judgment and order dated 16.11.1988 and 18.10.1988 respectively passed by Sri Radha Kant, Additional District Judge, Dehradun in Land Acquisition Reference No.86 of 1981 and No.19 of 1981, thereby enhancing the compensation awarded by the Spl. Land Acquisition Officer, Dehradun, Sri Lokendra Pal Singh, vide his award dated 16.7.1980.

Briefly stated, the facts are that total 45.57 acre land of Sardar Bhagat Singh (***respondent***) and 67.82 acre land of Dehradun Tea Company Ltd., under tea cultivation was acquired by the impugned award, situated in village Khemadoon, and Shahpur santor besides other land of adjoining villages for the purpose of expansion of Indian Military Academy. Notification under section 4(1) of the Land Acquisition Act was made on 28.11.1977 while notification under section 6 of the Act was issued on 1.3.1978. it is necessary to mention here that and measuring 2.5 acres out of the total land measuring 67.81 acres of Dehradun Tea Company, and similarly land measuring .39 acre and .99 acre of Sardar Bhagat Singh was considered to be disputed by the S.L.A.O. but in proceeding initiated under S.30 of the Act, the title of disputed land was decided in favour of the Tea Company by the learned lower court vide judgment dated 7.11.1985, and in favour of Sardar Bhagat Singh by orders dated 29.6.1985 and 7.11.1985 and the same have not been challenged before us in this appeal.

As has been mentioned by the Special land Acquisition officer in the impugned award that the land of Sahpur Santor and Khemadoon in which Dehradun Tea Company is located, adjoin each other and respondent Sardar Bhagat Singh has agreed for compensation at par Dehradun Tea Company and he fixed the market value of the property of both the respondents similarly. The Land Acquisition Officer assessed the market value of the land on the basis of capitalized value and since the plantation of trees was a must for tea cultivation, he did not allow any compensation for the trees. He calculated the net income at Rs.432.54 pr acre and multiplied this per acre income by ten for arriving at total compensation. On the total compensation he allowed solatium at 15% and for buildings he accepted the valuation made by the PWD on which also he allowed solatium at 15% of the market value assessed. Aggrieved by this award the landowners filed their claims for reference, which were made over to the competent court under section 18 of the Act.

In their reference petition, the petitioners claimed value of their land atleast at R.20,000/- per bigha and stated that they were zamindars of the property in question and after abolition of zamindari they have become bhumidhars thereof. It was stated that other land acquired in the vicinity by the same notification has the same location, nature and value of land as of the present respondents and assessment of the land in question on the basis of capitalization was wrong, and they were entitled atleast to Rs.1,00,000/- per acre as the land has potential value of building site and important government and non government buildings, all amenities are available in and around the villages. They also claimed compensation for valuable shady trees of Shisham, Siras, Mango and Kukat and they were deprived of these trees without paying any value for them. They also claimed solatium at the rate of 30% of the market value with interest @ 9% and 15%, additional compensation at 12% as provided under the law.

The learned lower court framed 5 necessary issues and held that the petitioners were entitled to the market value of their land on the basis of comparable sales and not on the capitalization of income method, as the similarly placed adjoining land owners have been paid a higher compensation (relying on the sale deed executed by Sri Brij Mohan on 8.8.1975 of a piece of land in the vicinity of the land in question giving the rate of Rs. 1,75,000/- per acre after making allowance for necessary deductions) and fixed it at Rs.1,00,000/- per acre and also held that fuel value should be given for the trees and fixed is at Rs. 25/- per tree on the evidence of expert witness. It also held that the petitioners were entitled to interest at 12% p.a. on the market value of the property for the date of notification till the date of award (28.11.1977 to 16.7.1980), further 9% interest u/s 28 from the date 8.9.1980 of taking possession by the State. Solatim on marked value was allowed at 30% under S.23(2) of the Land Acquisition Act guided from the Apex Court ruling in the case of Bhag Singh and another vs. Union Territory of

Chandigarh, A.I.R. 1985 SC. 1586. It may be mentioned here that the law laid down in this case has been overruled by the Hon'ble Supreme Court in the case of ***"Union of India V. Raghubir Singh" (AiR, 1989, Supreme Court, 1933).*** It also allowed necessary incidental damages for shifting from the acquired land. The present appeals have been filed against these judgments of the learned lower court inter alia supporting the award of the Spl. Land Acquisition Officer and that the compensation should have not been enhanced on the basis of amended sections 23(2) and 28 of the Land Acquisition Act.

We have heard the learned counsel and perused the impugned judgments on common lines as well as the evidence and documents on record.

On the evidence available on record, the learned lower court has after a lengthy discussion has held that the and of the present respondents was adjoining the other plots acquired for the same purpose and by the same notification, the case of which had been decided by Sri Bhanwar Singh, the then a Addl. District judge, Dehradun and that there was ample evidence on record that the disputed land was very close to the Vasant Vihar Colony, I.M.A. and Indranagar Colony, and had water and electricity and was highly potential for building site. The evidence on record shows that even DW Bachan Singh Negi has admitted that the land was potential for building site and was located near the ***abadi.*** The findings of the learned lower court are supported by the evidence led from the side of respondents who have also filed the map of the land in disputed and surrounding areas confirming the potential of the land. The learned lower court also rightly found that the market value of the land should have been worked out according to law on the basis of comparable sales and other evidence and the method adopted by the Special land Acquisition officer was not the only method to come to market value of the land specially when houses existed over the same. The method adopted by the Special land Acquisition Officer

was certainly erroneous when market value of the similar potential lands of the adjoining villages forming part of the same notification, was assessed on the basis of exemplar sale deeds and the market value at Rs. 1,00,000/- allowed by the court below earlier for big and small pieces of land of the villages fixed after making provision for necessary deduction for development not only on the basis of a sale deed but also after consideration of other factors and law laid down by superior courts. He also rightly held that the value of trees should have also been given to the petitioner Bhagat Singh and allowed him rs.25/- per tree as already given to him by the court in review petition i n another case. The value of trees given to Dehradun Tea Company is based on the report and evidence of a retired D.F.O. who is an expert witness and in our view the petitioner was entitled to it. It cannot be accepted that the trees constituted necessary part of tea crop on the land of which market value has wrongly been assessed on the basis of capitalization of income. The value given by the learned lower court for trees would rater appear on the lower side. Therefore, we eject the argument on behalf of the appellants to support market value of land and trees as awarded by the Spl. Land Acquisition officer and upheld the finding of the learned lower court on this point.

So far giving interest and solatium at enhanced rate is concerned, the learned lower, court has dealt this point in detail and has held that the petitioners were entitled to the enhanced rate of interest and solatium in view of the amendment of sections 23(2) and 28 of the Land Acquisition Act. On this point, the approach of the learned reference court appears to be just and proper. In our opinion, the benefit of enhancement in solatium is available only in those appeals, decided by the High Court or the Hon'ble Supreme Court, which have arisen out of award passed by Collector or Court between date of introduction of amendment Bill in Parliament and date of its passing, i.e. between 30$^{th}$ Arial, 1982 and 24$^{th}$ September, 1984 respectively. We are supported in our view by the Apex Court judgment in the case of ***"Union of India V. Raghubir Singh" (AIR***

***1989 Supreme Court 1933).*** In which it has been observed by the Hon'ble Supreme Court in para 32 that ***"Due Significance must be attached to that word ('such'), and to our mind it must necessarily intends that the appeal to the High Court or the Supreme Court, in which the benefit of the enhanced solatium is to be given, must be confined to an appeal against an award of the Collector or of the Court rendered between 30 April, 1982 and 24 Septembers, 1984,"*** Admittedly, in the present case, the award by the Special Land Acquisition Officer Dehradun was made on 16-7-1980. Against the said award, the reference was made before the Additional District Judge, Dehradun in Land Acquisition Reference No. 86 of 1981 and Reference No. 19 of 1981, which were disposed of vide judgment and order dated 16.11.1988 and 18.10.1988 respectively, as mentioned earlier. Therefore, it is clear from the record that the award by the Reference Court has been made much after the passing of the amendment in the land Acquisition Act in the year 1984, hence the petitioners, who are respondents in the present appeals, were entitled to enhanced rate of interest and solatium, in view of the amendment of Sections 23(2) and 28 of the land Acquisition Act. The contention of the learned counsel for the appellant that the award having been made by the Special Land Acquisition Officer on 16-7-1980, the Reference Court has wrongly applied the provisions of amended Act in the matter of solatium at enhanced rate and interest under the amended provisions of Land Acquisition Act has no force for the simple reason that when the reference has been disposed of by the Reference Court in the year 1988, it becomes immaterial that the award by the Special Land Acquisition Officer having been made in the year 1980. By no stretch of imagination, to our mind, it can be said that the reference court has committed any illegality or infirmity in the cases under appeals by applying the amended provisions of the said Act.

No other point was urged or argued before us in the present appeal.

In the result, both the appeals lack merit and must fail.

Both the appeals are dismissed. The judgment and order dated 16.11.1988 and 18.10.1988, appealed against, are upheld. No order as to costs.

**(B.S. Verma, J.)** **(P.C. Verma, J.)**

SPA/